

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID DOWNING

Appeal No. 2001-2338
Application No. 08/996,360

ORDER REMANDING TO EXAMINER

On page 3 of the Examiner's Answer mailed January 29, 2001 (Paper No. 25), the examiner lists the following references as "(9) Prior Art of Record":

4,285,544	Zapf	8-1981
4,925,241	Geraci	5-1990
5,332,288	Coates	7-1994
5,429,416	Lofy	7-1995

No listing under "Prior Art of Record" appears for the Stewart reference, which was included on page 4 of the Examiner's Answer

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as part of the § 103 rejection of claims 23-26, 28-31, and 33-43. In addition, on page 9 of the Answer, the examiner states that "[o]n page 19, section 3 of the Appeal Brief, the Appellant asserts that the Examiner has used the Stewart reference to reject claims when no such thing has occurred." Clarification is required concerning the pertinence of the Stewart reference. Further, the Manual of Patent Examining Procedure (MPEP) § 1208(A)(9) states:

(A) REQUIREMENTS FOR EXAMINER'S ANSWER.
The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

(9) References of Record. A listing of the references of record relied on

If appropriate, compliance with MPEP § 1208(A)(9) in listing the Stewart reference is required.

Accordingly, it is

ORDERED that the application is remanded to the examiner for resolution of the following issues:

1. for clarification regarding the pertinence of the Stewart reference listed in the Examiner's Answer (Paper No. 25);

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2. if appropriate, for compliance with MPEP
§ 1208(A)(1) concerning listing the Stewart reference as
"Prior Art of Record" in a Supplemental Examiner's Answer;
and

3. for such further action as may be appropriate.
It is important that the Board of Patent Appeals and Interfer-
ences be informed promptly of any action affecting the status of
the appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: _____
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